

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES T. HETCHLER, SR. et al.,

Plaintiffs,

v.

ROCKWALL COUNTY TEXAS,

Defendant.

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CIVIL ACTION NO. 3:08-CV-0551-B

**ORDER ADOPTING THE MAGISTRATE JUDGE'S
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

Before the Court is the Magistrate Judge's March 18, 2009 Report and Recommendation (doc. 20) on Defendant Rockwall County, Texas's Rule 12(b)(6) Motion to Dismiss, or in the Alternative, Rule 56 Motion for Summary Judgment (doc. 13). More than ten days have passed and no objection has been filed. See 28 U.S.C. § 636(b)(1)(C). In the absence of objections, the Court reviews the Magistrate Judge's findings and recommendations for clear error.

The Court notes that in their Response to the Defendant's Motion (doc. 15), Plaintiffs make an "Objection to the Consideration of Portions of the Affidavit of Captain Robert Guzik" which was not directly addressed by the Magistrate Judge in the Report and Recommendation. (Plaintiff's Response at III.A.) The Court has made an independent review of the briefing and case law on this point and concludes that Plaintiffs' Objection to paragraph 4 of the Affidavit of Captain Robert Guzik must be **SUSTAINED**.¹ (Motion App. at ii.) The Court finds that the objectionable portion of the

¹ Paragraph 4 of the Affidavit of Captain Robert Guzik, to which Plaintiffs objects, states as follows:

The Detention Center operates pursuant to the Texas Commission on Jail Standards. All current jailers working at the Detention Center are in compliance with all Texas mandated training standards for jailers, as set forth by the Texas Commission on Law Enforcement Officer's Standards (TCLEOSE) and/or other entities. Furthermore, all former jailers who

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Affidavit contains facts for which the affiant does not state a basis for personal knowledge and which are mere legal conclusions. Conclusory facts or legal conclusions contained in a fact affidavit are not proper summary judgment evidence. See *Galindo v. Precision Am. Corp.*, 754 F.2d 1212, 1216 (5th Cir. 1985); WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 3d § 2738 (1998). Furthermore, the facts introduced must be alleged on personal knowledge. See FED. R. CIV. P. 56(e). Therefore, paragraph 4 of the Affidavit of Captain Robert Guzik contained on page ii of the Appendix in Support of Defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (doc. 13) is **STRICKEN**. The Court will not consider paragraph 4 of the Affidavit of Captain Robert Guzik in reviewing the evidence.

After making an independent review of the pleadings, files and records in this case, and the Report and Recommendation of the United States Magistrate Judge, the Court is of the opinion that the Report and Recommendation is correct and free of clear error. The Court notes that the exclusion of the objectionable portion of Defendant's evidence does not alter the analysis and conclusions made by the Magistrate Judge.

It is therefore **ORDERED** that the Report and Recommendation of the United States Magistrate Judge (doc. 20) is **ADOPTED**. Because the Defendant relies on materials outside the pleadings to support its dispositive motion, the Court must treat Defendant's Rule 12(b)(6) Motion

¹(...continued)


worked at the Detention Center were, at all times of their employment as jailers with the Detention Center, in compliance with all Texas mandated training standards for jailers, as set forth by the Texas Commission on Law Enforcement Officer's Standards (TCLEOSE) and/or other entities. This specifically includes, but is not limited to, the following persons, who at all times serving as a jailer of the Detention Center were in compliance with all Texas mandated training standards for jailers, as set forth by the Texas Commission on Law Enforcement Officer's Standards (TCLEOSE) and/or other entities: (a) Bradley Dick, (b) Glen Hardin, (c) Jesse Saxon, and (d) Joseph Willis.

(Motion App. at ii.)

to Dismiss (doc. 13) as a Rule 56 Motion for Summary Judgment. In accordance with the Report and Recommendation of the United States Magistrate Judge, the Defendant's Rule 56 Motion for Summary Judgment (doc. 13) is **GRANTED**.

SO ORDERED.

SIGNED April 27, 2009



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE